IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 688 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SABBIR ALIAS LALU

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 688 of 2001

MS BANNA S DUTTA for Petitioner No. 1

MR KT DAVE APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 14/09/2001

ORAL JUDGEMENT

1. By means of filing this petition, petitioner who is undergoing imprisonment for life at Vadodara Central Jail, has prayed to grant him furlough leave in the interest of justice.

2. The petitioner was prosecuted for the offence under Section 302 of the Indian Penal Code and was convicted and sentenced to undergo imprisonment for life vide order dated April 10, 1992 recorded in Sessions Case No.64 of 1991 by the learned Additional Sessions Judge, Vadodara. Against the order of conviction and sentence Criminal Appeal No. 276 of 1992 was filed before this Court which came to be dismissed vide order dated August 23, 1996.

3. It is the case of the petitioner that he was granted furlough leave but he absconded for 30 months since 1992 and thereafter in the year 1995 he was arrested and in that respect proceedings were initiated by filing Criminal Complaint against him. Thereafter he applied for first furlough which was due on January 30, 1997 and the application was rejected vide order dated February 14, 1997 by the I.G. Prisons which has given rise to the present petition.

3. Ms. Banna Dutta, learned advocate for the petitioner contended that if the prisoner is involved in any offence while he is in jail and in that connection if a complaint is filed before the Judicial Magistrate, First Class, remission earned by him may be cancelled only after his conviction is recorded and not before that. So far as the case of the petitioner is concerned, he absconded for more than 30 months and therefore offence is registered and he has been prosecuted before the learned JMFC, Vadodara, but he is not convicted and unless he is convicted, furlough leave cannot be refused.

4. To buttress the aforesaid submission, she placed reliance on the judgment of the Supreme Court in the case of State of Haryana v. Ghaseeta Ram, AIR 1997 SC 1868. She, therefore, urged to direct the jail authority to grant the petitioner furlough leave which was due since January 31, 1997.

5. Mr. K.T. Dave, learned APP opposed the submissions of the learned advocate for the petitioner and contended that the request for furlough leave came to be rejected vide order dated February 14, 1997 and this petition is filed after a period of four years thereafter and no proper explanation is coming forward from the petitioner as to why there is abnormal delay in filing the petition and, therefore, in absence of any explanation, the delay of four years cannot be condoned and the petition shall not be entertained. Besides this, he also contended that the petitioner was granted second furlough leave which fell due in the year 2000 vide order

dated April 18, 2001 and he has enjoyed the same and by enjoying the second furlough leave, the petitioner has waived his right for filing any petition against refusal to grant his first furlough. He therefore urged to pass appropriate orders by rejecting the petition.

6. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the documents annexed to the petition so also the judgment cited at the bar by the learned advocate for the petitioner. In the said judgment the Supreme Court has interpreted paras 633-A 627 of the Punjab Jail Manual and held that if offence punishable under Penal Code is committed by prisoner after his admission to jail, the remission earned by him may be cancelled only after his conviction is recorded but not before that and imposition of punishment twice, one by the Jail Superintendent and second time by the trial Court on his conviction is not permissible.

7. There cannot be any dispute with regard to the proposition of law laid down by the Supreme Court in the above mentioned judgment. However, the said judgment is not applicable to the facts of the present case in view of the fact that the petitioner has filed this petition after abnormal delay of a period of four years without tendering any explanation why the petition has been filed at a belated stage and that too after enjoying the second furlough leave which fell due in the year 2000 and granted by the jail authority on April 18, 2001. Therefore, in my view, by enjoying the second furlough leave, the petitioner has waived his right for claiming the first furlough leave which has been rejected by the jail authority by order dated February 14, 1997.

8. Be it noted that this is a petition filed under Article 226 of the Constitution. Normally petition filed after abnormal delay of four years should not be entertained unless cogent reason for condonation of delay is shown. In the instant case, in the absence of any explanation coming forth from the petitioner as to why the petition is filed at a belated stage, I am of the opinion that the petition merits rejected only.

9. For the foregoing reasons, the petition fails and is accordingly rejected. Rule is discharged.

(A.M. Kapadia, J.)

(karan)